



TOWN OF BROOKLINE

Massachusetts

BOARD OF APPEALS

DIANE R. GORDON, Co-Chair
HARRY MILLER, Co-Chair
BAILEY S. SILBERT

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Brookline, MA 02445
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PATRICK J. WARD, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA060035

Petitioners, Sonia Friedman and Gerald Weinhaus applied to the Building Commissioner for permission to construct a two and one half (2 ½) story addition to the rear of their home at 208 Church Street. The application was denied as the proposed addition violated the floor area ratio requirements of the By-Law. Applicants appealed the decision of the Building Department denying their request for a building permit.

On May 25th, 2006, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals. The Board then fixed the date of July 13th, 2006 at 7:30 p.m. in the Selectmen's Hearing Room on the sixth floor of Town Hall as the time and place of a hearing of the appeal. Notice of the hearing was mailed to petitioners and their attorney, (if any of record), to owners of properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on June 29th and July 6th, 2006 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice as follows:

LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEAL
NOTICE OF HEARING

PETITIONER: Sonia Friedman and Gerald Weinhaus

LOCATION OF PREMISES: 208 Church Street

DATE AND PLACE OF HEARING

Thursday July 13th, 2006

At 7:30 p.m. in the Selectman's Hearing Room on the sixth floor of Town Hall 333 Washington Street Brookline, Massachusetts.

A public hearing will be held for a variance from Section 5.20; Floor Area Ratio; and a special permit under Section 5.09.2.j, Design Review; to construct an addition as per plans at 208 Church Street.

Said premises are located in a S-7 (Single Family) Residential District.

The Town of Brookline does not discriminate on the basis of disability in admission to, or access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Co-ordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2330; TDD (617) 730-2327.

Diane R. Gordon

Harry Miller

Bailey Silbert

At the time and place specified in the notice a public hearing was held by this Board. Present were Enid Starr, Chair, Bailey Silbert and Sarah Sheldon. Petitioners were represented by Attorney Jacob Walters of Goldenberg, Walters & Popkewitz of Seven Harvard Street in Brookline. Mr. Walters began by stating that all the required relief could be provided by two (2) Special Permits. Mr. Walters indicated that this was an unusual situation as most of the dwelling was located in Boston, but the majority of the addition would be located in Brookline. Mr. Walters stated that the City of Boston has approved the proposal and issued all required permits, whereas the Town of Brookline denied the application due to the 5,000 square foot lot being located in an S-7 Zoning District. Mr. Walters described the project which would include a den on the

first floor and an expanded master bedroom and new bathroom on the second floor. The addition would also include a new deck at the rear of the first floor addition. Mr. Walters stated that the issues before the Board were floor area ratio and design review. With reference to design review, Mr. Walters stated that it was required due to the Special Permit under Section 5.22 for Floor Area Ratio. Mr. Walters went on to say that the Planning Board's unanimous recommendation approving the proposal was based upon the Board's determination that the proposed addition would not be over any of the existing landscaping and would be constructed into the grade of the property, and that the addition would be constructed with materials similar to the existing dwelling and would have no impact upon the neighborhood. Mr. Walters stated that relief could be granted pursuant to Section 5.09.2.j of the By-Law.

Mr. Walters then addressed the floor area ratio issue and stated that pursuant to Section 5.22.3.a.2, a Special Permit may be granted in S districts for an increase in floor area so long as the addition does not exceed 150% of the permitted gross floor area. In this case, the maximum allowable square footage is 2,100 and the applicants' proposal is 2,023 square feet. Mr. Walters noted that the home in question consists of only 1,303 square feet and would remain a very small dwelling even after the construction of the proposed addition. Mr. Walters concluded by provided a letter of support from the next door neighbor most affected by the proposed addition, and stated that the applicants had discussed their building plans with all their immediate neighbors and were not aware of any opposition.

The Chair then called upon Timothy Greenhill of the Brookline Planning Department to present the Planning Board report. Mr. Greenhill stated that the Planning Board has no objection to the proposed addition and noted that all the required relief could be granted by Special Permit. The Planning Board felt that since the addition was at the rear of the property it would have no impact upon the streetscape, and was being constructed with materials compatible with the existing structure. Mr. Greenhill went on to say that the Planning Board noted that the basement is shown on the plans as unfinished and would be subject to a 10 year waiting period before it can be converted to finished space. Mr. Greenhill concluded by stating that the Planning Board supports the proposed addition, with the following conditions: (1) Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision, (a) final building

elevations, stamped and signed by a registered architect and (b) evidence that the Board of Appeals decision has been submitted to the Registry of Deeds.

The Chair then called upon Frank Hitchcock of the Brookline Building Department. Mr. Hitchcock stated that the additional square footage could be granted under the bonus provisions of Section 5.22.3.a.2. Mr. Hitchcock added that the proposal meets the criteria for the bonus Floor Area Ratio and stated that the design review criteria were also met. Mr. Hitchcock further stated that the floor area calculations have been made as if the entire property is located in Brookline while in fact only a portion of the property is in Brookline. Mr. Hitchcock concluded by saying the dwelling was very modest at 1,303 square feet and that the Building Department had no objection to the proposal.

The Board deliberated and noted for the record that it specifically makes no findings regarding the basement of the premises as the issue of the basement and its possible future conversion into living space was not before it. Accordingly the Board members stated that no conclusions regarding the basement may be drawn from this decision.

The Board, having heard all the testimony, and after review of the plans submitted, voted unanimously to grant special permits pursuant to Section 5.09.2.j and Section 5.22.3.a.2, subject to the following condition:

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TOWN OF BROOKLINE
TOWN CLERK

11 AUG -2 A 10:17

Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision, (a) final building elevations, stamped and signed by a registered architect and (b) evidence that the Board of Appeals decision has been submitted to the Registry of Deeds.

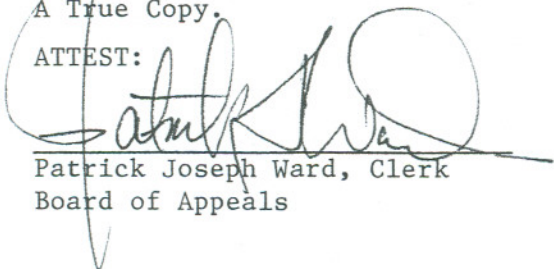
Unanimous decision of
the Board of Appeals


Enid Starr, Chair

Date of Filing: August 2, 2006

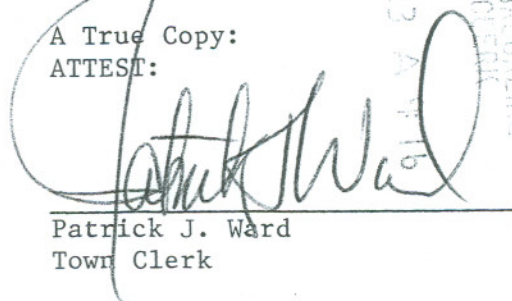
A True Copy.

ATTEST:


Patrick Joseph Ward, Clerk
Board of Appeals

Twenty days have elapsed and
no appeal has been filed.

A True Copy:
ATTEST:


Patrick J. Ward
Town Clerk